

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

12 | SUZUKI MOTOR OF AMERICA, INC., a California Corporation,

Plaintiff,

vs.

15 BONNIE MULLION, an individual;
16 JAMES MULLION, an individual;
DOES 1 through 10,

Defendants.

CASE NO. 8:17-cv-00903-CJC (JDEx)

PROTECTIVE ORDER

Action Filed: May 24, 2017
Trial Date: None Set

19 | 1. PURPOSES AND LIMITATIONS

20 Discovery in this action is likely to involve production of confidential,
21 proprietary or private information for which special protection from public disclosure
22 and from use for any purpose other than pursuing this litigation—except as described
23 in Paragraph 9, *infra*—may be warranted. Accordingly, the parties hereby stipulate to
24 and petition the Court to enter the following Stipulated Protective Order. The parties
25 acknowledge that this Order does not confer blanket protections on all disclosures or
26 responses to discovery and that the protection it affords from public disclosure and
27 use extends only to the limited information or items that are entitled to confidential
28 treatment under the applicable legal principles.

1 2. **GOOD CAUSE STATEMENT**

2 This action is likely to involve discovery regarding financial accounts,
3 including but not limited to bank accounts and credit card accounts, maintained by
4 the Defendants, discovery relating to the financial condition of Defendants, and with
5 respect to internal procedures and propriety business practices used by Plaintiff. This
6 information warrants a measure of protection from public disclosure and from use for
7 any purpose other than prosecution of this action—except as described in Paragraph
8 9, *infra*.

9 Such confidential and proprietary materials and information consist of, among
10 other things, confidential business or financial information, information regarding
11 confidential business practices, which is otherwise generally unavailable to the public,
12 or which may be privileged or otherwise protected from disclosure under state or
13 federal statutes, court rules, case decisions, or common law.

14 Accordingly, to expedite the flow of information, to facilitate the prompt
15 resolution of disputes over confidentiality of discovery materials, to adequately
16 protect information the parties are entitled to keep confidential, to ensure that the
17 parties are permitted reasonable necessary uses of such material in preparation for and
18 in the conduct of trial, to address their handling at the end of the litigation, and serve
19 the ends of justice, a protective order for such information is justified in this matter.
20 It is the intent of the parties that information will not be designated as confidential for
21 tactical reasons and that nothing be so designated without a good faith belief that it
22 has been maintained in a confidential, non-public manner, and there is good cause
23 why it should not be part of the public record of this case.

24 3. **ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE**

25 The parties further acknowledge, as set forth in Section 12.3, below, that this
26 Stipulated Protective Order does not entitle them to file confidential information
27 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and
28 the standards that will be applied when a party seeks permission from the court to file

1 material under seal.

2 There is a strong presumption that the public has a right of access to judicial
3 proceedings and records in civil cases. In connection with non-dispositive motions,
4 good cause must be shown to support a filing under seal. See *Kamakana v. City and*
5 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
6 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics, Inc.*,
7 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good
8 cause showing), and a specific showing of good cause or compelling reasons with
9 proper evidentiary support and legal justification, must be made with respect to
10 Protected Material that a party seeks to file under seal. The parties' mere designation
11 of Disclosure or Discovery Material as CONFIDENTIAL does not— without the
12 submission of competent evidence by declaration, establishing that the material
13 sought to be filed under seal qualifies as confidential, privileged, or otherwise
14 protectable—constitute good cause.

15 Further, if a party requests sealing related to a dispositive motion or trial, then
16 compelling reasons, not only good cause, for the sealing must be shown, and the relief
17 sought shall be narrowly tailored to serve the specific interest to be protected. See
18 *Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each
19 item or type of information, document, or thing sought to be filed or introduced under
20 seal, the party seeking protection must articulate compelling reasons, supported by
21 specific facts and legal justification, for the requested sealing order. Again, competent
22 evidence supporting the application to file documents under seal must be provided by
23 declaration.

24 Any document that is not confidential, privileged, or otherwise protectable in
25 its entirety will not be filed under seal if the confidential portions can be redacted. If
26 documents can be redacted, then a redacted version for public viewing, omitting only
27 the confidential, privileged, or otherwise protectable portions of the document, shall
28 be filed. Any application that seeks to file documents under seal in their entirety

1 should include an explanation of why redaction is not feasible.

2 **4. DEFINITIONS**

3 4.1 Action: this pending federal lawsuit, styled as *Suzuki Motor of America, Inc. v. Mullion, et al.*, United States District Court, Central District of California, Case No. 8:17-cv-00903-CJC-JDE.

6 4.2 Challenging Party: a Party or Non-Party that challenges the designation
7 of information or items under this Order.

8 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for protection
10 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
11 Cause Statement.

12 4.4 Counsel: Outside Counsel of Record and in-house and/or outside
13 general Counsel (as well as their support staff).

14 4.5 Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL.”

17 4.6 Disclosure or Discovery Material: all items or information, regardless
18 of the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things), that are produced or
20 generated in disclosures or responses to discovery in this matter.

21 4.7 Expert: a person with specialized knowledge or experience in a matter
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as
23 an expert witness or as a consultant in this Action.

24 4.8 House Counsel: attorneys who are employed by, retained by, or engaged
25 by a party to this Action.

26 4.9 Non-Party: any natural person, partnership, corporation, association or
27 other legal entity not named as a Party to this action.

28 4.10 Outside Counsel of Record: attorneys who are not employees of a party

1 to this Action but are retained to represent or advise a party to this Action and have
2 appeared in this Action on behalf of that party or are affiliated with a law firm that
3 has appeared on behalf of that party, and includes support staff.

4 4.11 Party: any party to this Action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their
6 support staffs).

7 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this Action.

9 4.13 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 4.14 Protected Material: any Disclosure or Discovery Material that is
14 designated as “CONFIDENTIAL.”

15 4.15 Receiving Party: a Party who receives Protected Material from a
16 Designating Party.

17 **5.0 SCOPE**

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or extracted
20 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
21 Protected Material; and (3) any testimony, conversations, or presentations by Parties
22 or their Counsel that might reveal Protected Material. Any use of Protected Material
23 at trial shall be governed by the orders of the trial judge. This Order does not govern
24 the use of Protected Material at trial.

25 **6. DURATION**

26 Once a case proceeds to trial, information that was designated as
27 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
28 as an exhibit at trial becomes public and will be presumptively available to all

1 members of the public, including the press, unless compelling reasons supported by
2 specific factual findings to proceed otherwise are made to the trial judge in advance
3 of the trial. See *Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
4 showing for sealing documents produced in discovery from “compelling reasons”
5 standard when merits-related documents are part of court record). Accordingly, the
6 terms of this protective order do not extend beyond the commencement of the trial.

7 **7. DESIGNATING PROTECTED MATERIAL**

8 7.1 Exercise of Restraint and Care in Designating Material for Protection.
9 Each Party or Non-Party that designates information or items for protection under this
10 Order must take care to limit any such designation to specific material that qualifies
11 under the appropriate standards. The Designating Party must designate for protection
12 only those parts of material, documents, items or oral or written communications that
13 qualify so that other portions of the material, documents, items or communications
14 for which protection is not warranted are not swept unjustifiably within the ambit of
15 this Order.

16 Mass, indiscriminate or routinized designations are prohibited. Designations
17 that are shown to be clearly unjustified or that have been made for an improper
18 purpose (e.g., to unnecessarily encumber the case development process or to impose
19 unnecessary expenses and burdens on other parties) may expose the Designating Party
20 to sanctions.

21 If it comes to a Designating Party’s attention that information or items that it
22 designated for protection do not qualify for protection, that Designating Party must
23 promptly notify all other Parties that it is withdrawing the inapplicable designation.

24 7.2 Manner and Timing of Designations. Except as otherwise provided in
25 this Order (see, e.g., section 7.3 below), or as otherwise stipulated or ordered,
26 Disclosure or Discovery Material that qualifies for protection under this Order must
27 be clearly so designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix at a minimum, the legend
4 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
5 contains protected material. If only a portion of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s)
7 (e.g., by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents available for inspection
9 need not designate them for protection until after the inspecting Party has indicated
10 which documents it would like copied and produced. During the inspection and
11 before the designation, all of the material made available for inspection shall be
12 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
13 it wants copied and produced, the Producing Party must determine which documents,
14 or portions thereof, qualify for protection under this Order. Then, before producing
15 the specified documents, the Producing Party must affix the “CONFIDENTIAL
16 legend” to each page that contains Protected Material. If only a portion of the material
17 on a page qualifies for protection, the Producing Party also must clearly identify the
18 protected portion(s) (e.g., by making appropriate markings in the margins).

19 (b) for testimony given in depositions that the Designating Party identifies
20 the Disclosure or Discovery Material on the record, before the close of the deposition
21 all protected testimony.

22 (c) for information produced in some form other than documentary and for
23 any other tangible items, that the Producing Party affix in a prominent place on the
24 exterior of the container or containers in which the information is stored the legend
25 "CONFIDENTIAL." If only a portion or portions of the information warrants
26 protection, the Producing Party, to the extent practicable, shall identify the protected
27 portion(s).

28 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent

1 failure to designate qualified information or items does not, standing alone, waive the
2 Designating Party's right to secure protection under this Order for such material.
3 Upon timely correction of a designation, the Receiving Party must make reasonable
4 efforts to assure that the material is treated in accordance with the provisions of this
5 Order.

6 **8. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 8.1 Timing of Challenges. Any Party or Non-Party may challenge a
8 designation of confidentiality at any time that is consistent with the Court's
9 Scheduling Order.

10 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
11 resolution process under Local Rule 37-1 et seq.

12 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
13 joint stipulation pursuant to Local Rule 37-2.

14 8.4 Burden. The burden of persuasion in any such challenge proceeding
15 shall be on the Designating Party. Frivolous challenges, and those made for an
16 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
17 other parties) may expose the Challenging Party to sanctions. Unless the Designating
18 Party has waived or withdrawn the confidentiality designation, all parties shall
19 continue to afford the material in question the level of protection to which it is entitled
20 under the Producing Party's designation until the Court rules on the challenge.

21 **9. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 9.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a Non-Party in connection with this
24 Action only for prosecuting, defending or attempting to settle this Action, except that
25 this Order will not be deemed to preclude any Party from providing any information
26 requested in connection with a criminal investigation conducted by a law enforcement
27 agency and/or district attorney's office. Such Protected Material may be disclosed
28 only to the categories of persons and under the conditions described in this Order.

1 When the Action has been terminated, a Receiving Party must comply with the
2 provisions of section 15 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” by another Party only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
11 as employees of said Outside Counsel of Record to whom it is reasonably necessary
12 to disclose the information for this Action;

13 (b) the officers, directors, employees, and House Counsel of the Receiving
14 Party and/or the parent company of the Receiving Party to whom disclosure is
15 reasonably necessary for this Action;

16 (c) Experts (as defined in this Order) of the Receiving Party to whom
17 disclosure is reasonably necessary for this Action and who have signed the
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff;

21 (f) professional jury or trial consultants, mock jurors, and Professional
22 Vendors to whom disclosure is reasonably necessary for this Action and who have
23 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information;

26 (h) during their depositions, witnesses, and attorneys for witnesses, in the
27 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
28 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will

1 not be permitted to keep any confidential information unless they sign the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
3 agreed by the Designating Party or ordered by the court. Pages of transcribed
4 deposition testimony or exhibits to depositions that reveal Protected Material may be
5 separately bound by the court reporter and may not be disclosed to anyone except as
6 permitted under this Stipulated Protective Order; and

7 (i) any mediators or settlement officers and their supporting personnel,
8 mutually agreed upon by any of the parties engaged in settlement discussions.

9 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
10 **PRODUCED IN OTHER LITIGATION**

11 If a Party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this Action as
13 “CONFIDENTIAL,” that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification shall
15 include a copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to
17 issue in the other litigation that some or all of the material covered by the subpoena
18 or order is subject to this Protective Order. Such notification shall include a copy of
19 this Stipulated Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued
21 by the Designating Party whose Protected Material may be affected. If the
22 Designating Party timely seeks a protective order, the Party served with the subpoena
23 or court order shall not produce any information designated in this action as
24 “CONFIDENTIAL” before a determination by the court from which the subpoena or
25 order issued, unless the Party has obtained the Designating Party’s permission. The
26 Designating Party shall bear the burden and expense of seeking protection in that court
27 of its confidential material and nothing in these provisions should be construed as
28 authorizing or encouraging a Receiving Party in this Action to disobey a lawful

1 directive from another court.

2 **11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
3 **PRODUCED IN THIS LITIGATION**

4 (a) The terms of this Order are applicable to information produced by a Non-
5 Party in this Action and designated as "CONFIDENTIAL." Such information
6 produced by Non-Parties in connection with this litigation is protected by the
7 remedies and relief provided by this Order. Nothing in these provisions should be
8 construed as prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party's confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party's
12 confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-Party that
14 some or all of the information requested is subject to a confidentiality agreement with
15 a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
17 Order in this Action, the relevant discovery request(s), and a reasonably specific
18 description of the information requested; and

19 (3) make the information requested available for inspection by the Non-
20 Party, if requested.

21 (c) If the Non-Party fails to seek a protective order from this court within 14
22 days of receiving the notice and accompanying information, the Receiving Party may
23 produce the Non-Party's confidential information responsive to the discovery request.
24 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
25 any information in its possession or control that is subject to the confidentiality
26 agreement with the Non-Party before a determination by the court. Absent a court
27 order to the contrary, the Non-Party shall bear the burden and expense of seeking
28 protection in this court of its Protected Material.

1 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
6 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
7 persons to whom unauthorized disclosures were made of all the terms of this Order,
8 and (d) request such person or persons to execute the “Acknowledgment and
9 Agreement to Be Bound” attached hereto as Exhibit A.

10 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
11 **PROTECTED MATERIAL**

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order that provides for production without prior
17 privilege review.

18 **14. MISCELLANEOUS**

19 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the Court in the future.

21 14.2 Right to Assert Other Objections. By stipulating to the entry of this
22 Protective Order, no Party waives any right it otherwise would have to object to
23 disclosing or producing any information or item on any ground not addressed in this
24 Stipulated Protective Order. Similarly, no Party waives any right to object on any
25 ground to use in evidence of any of the material covered by this Protective Order.

26 14.3 Filing Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
28 only be filed under seal pursuant to a court order authorizing the sealing of the specific

1 Protected Material at issue. If a Party's request to file Protected Material under seal
2 is denied by the court, then the Receiving Party may file the information in the public
3 record unless otherwise instructed by the court.

4 **15. FINAL DISPOSITION**

5 After the final disposition of this Action, within 60 days of a written request by
6 the Designating Party, each Receiving Party must return all Protected Material to the
7 Producing Party or destroy such material. As used in this subdivision, "all Protected
8 Material" includes all copies, abstracts, compilations, summaries, and any other
9 format reproducing or capturing any of the Protected Material. Whether the Protected
10 Material is returned or destroyed, the Receiving Party must submit a written
11 certification to the Producing Party (and, if not the same person or entity, to the
12 Designating Party) by the 60-day deadline that (1) identifies (by category, where
13 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
14 that the Receiving Party has not retained any copies, abstracts, compilations,
15 summaries or any other format reproducing or capturing any of the Protected Material.

16 Notwithstanding this provision, Counsel are entitled to retain an archival copy
17 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
18 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
19 work product, and consultant and expert work product, even if such materials contain
20 Protected Material. Any such archival copies that contain or constitute Protected
21 Material remain subject to this Protective Order as set forth in Section 6
22 (DURATION).

23 **16. VIOLATION**

24 Any violation of this Order may be punished by appropriate measures
25 including, without limitation, contempt proceedings and/or monetary sanctions.

26 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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28 ///

1 DATED: September 21, 2017 ADAMS & PHAM APC

2

3 By: /s/ Joseph M. Adams
4 Joseph M. Adams
5 Donald A. Green
6 Attorneys for Defendants BONNIE
7 MULLION and JAMES MULLION

8 DATED: September 21, 2017 LEWIS BRISBOIS BISGAARD & SMITH LLP

9

10 By: /s/ Stephen H. Turner
11 Stephen H. Turner
12 Attorneys for Plaintiff SUZUKI MOTOR
13 OF AMERICA, INC.

14 DATED: September 21, 2017 ALLIE & SCHUSTER, PC

15

16 By: /s/ William D. Schuster
17 William D. Schuster
18 Attorneys for Defendant DONNA HANNA

19 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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21 DATED: September 22, 2017

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HONORABLE JOHN D. EARLY
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, [full name], of [full
5 address], declare under penalty that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for the
7 Central District of California on [date] in the case of *Suzuki Motor of America, Inc. v.*
8 *Mullion, et al.*, United States District Court, Central District of California, Case No.
9 8:17-cv-00903-CJC-JDE. I agree to comply with and to be bound by all the terms of
10 this Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item that
13 is subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for the purpose of enforcing the terms of this
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [full
19 name] of _____ [full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 | Date:

24 City and State where signed:

25 Printed name:

27 | Signature: